



February 20, 2014

VIA E-MAIL AND U.S. MAIL

Mr. Edwin Quinones
Attorney
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Quinones.edwin@epa.gov

Re: The U.S. Oil Recovery Superfund Site, Pasadena, Harris County, Texas

Dear Mr. Quinones:

I am writing on behalf of the City of Pasadena Texas (the “**City**”), to bring to the attention of the U.S. Environmental Protection Agency (“**EPA**”) a letter and lengthy set of attachments from the attorneys purporting to represent the U.S. Oil Recovery Site PRP Group (“**PRP Group**”) against the City in connection with the U.S. Oil Recovery (USOR) Superfund Site. Specifically, by letter dated December 26, 2013¹, the PRP Group makes unfounded accusations against the City, asserting that the City provided EPA with “insufficient, if not inaccurate” information in the City’s June 13, 2013 response to EPA’s March 12, 2013 Information Request concerning the City’s historic municipal waste water treatment operations at 200 N. Richey (the “**Old Vince**”). As detailed below, the PRP Group’s accusations are without merit.

The PRP Group’s accusations are based upon the purported review of certain historical documents conducted by its hired consultant Thomas R. Marrou, P.E. Relying upon Mr. Marrou’s conclusions, the PRP Group erroneously concludes that the City received and treated hazardous waste at the Old Vince wastewater treatment plant and therefore must be a liable party under CERCLA, Section 107(a). However, a close review of Mr. Marrou’s declaration, and the several hundreds of pages of documents Mr. Marrou supplies in support of his declaration, show that there is no evidence to support the PRP Group’s conclusion that the City received or treated hazardous waste at the Old Vince wastewater treatment plant. Rather, the PRP Group’s accusations are based upon speculation and flawed analysis and should not be relied upon by EPA.

¹ A complete copy of the PRP’s December 26, 2013 letter and its attachments are included with this letter.

Below is the City's detailed response to the accusations made by the PRP Group in its December 2013 letter. The City welcomes the opportunity to meet with you and other representatives of EPA Region 6 to discuss the responses below and the PRP Group's letter.

A. Declaration of Thomas R. Marrou, P.E. – Consultant Retained By The PRP Group.

Mr. Marrou erroneously concludes that the "municipal wastewater treated by the City of Pasadena contained Hazardous Substances as defined by EPA CERCLA." Marrou Declaration at p.3. As detailed in the City's June 2013 response to EPA, at no time did the City receive or treat wastewater containing hazardous substances at the Old Vince. The City only ever received and treated normal domestic/commercial sewage² at the Old Vince. Mr. Marrou's erroneous assertion that the City treated wastewater containing hazardous substances is based upon public records and reports, which only indicate the presence of certain **trace** amounts of heavy metals in sludge and other wastewater samples taken over the years at the Old Vince.

As the City noted in its June 2013 response to EPA, normal domestic/commercial sewage often contains metals, including heavy metals such as copper, lead and zinc. These heavy metals can leach from plumbing pipes and fixtures in residential customers' homes and thus enter into the domestic/commercial wastewater. However, these heavy metals in normal domestic/commercial sewage are not present at concentration levels deemed hazardous. Rather, these metals were present in trace amounts in the wastewater and were unrelated to the activities of the residential discharger – i.e. they were background concentrations.

There is a regulatory difference between something containing pollutants in background concentrations versus those same pollutants occurring in concentrations that have been deemed hazardous and exceeding State or federal regulatory limits. Mr. Marrou refers to only trace amounts of heavy metals found in wastewater samples taken at the Old Vince, and these amounts while detectable above laboratory minimum qualification levels were not in amounts that exceeded a State or federal hazardous pollutant level. Mr. Marrou erroneously draws the conclusion that if a pollutant is detected above laboratory minimum quantification levels that is in itself proof that hazardous pollutants were detected. Mr. Marrou draws these conclusions without regard to the Resource Conservation and Recovery Act (RCRA) reporting levels or any other EPA or State regulatory thresholds limits being exceeded.

In its June 2013 response to EPA, the City fully disclosed that there may have been wastewater spills over the years at the Old Vince. The City also detailed in its June 2013 response, that contained within any wastewater spill were "normal background concentration contaminants, which may have included pollutants and/or contaminants." No information

² As a publicly owned treatment works, the Old Vince accepted sewage from households and businesses operating in the City of Pasadena. However, at no time did the Old Vince ever accept industrial wastewater, except from Minh Foods (now Schwann Foods) as noted below in Section H. At the time the Old Vince accepted wastewater from Minh Foods, Minh was not a categorical user but a non categorical user.

presented by Mr. Marrou indicates that any wastewater received and treated at the Old Vince contained hazardous levels of metals or other substances. As such, for the PRP Group to allege that the City has provided EPA with “insufficient, if not inaccurate” information concerning the treatment of hazardous substances is baseless.

B. Attachment 4 To Marrou Declaration - “Evidence of Hydraulic Overload.”

Mr. Marrou attaches numerous reports (most of which were prepared and submitted by the City to the appropriate regulatory authorities) regarding “excursions”, i.e. permit violations at the Old Vince. These documents report high rainfall events that resulted in excursions. Because the water table at the Old Vince is so close to the surface of the ground, during periods of high rainfall infiltration results and hydraulic overload at the Old Vince would occur, especially during severe storms. The hydraulic overload would result in wastewater spills from the Old Vince. However, the mere fact that the Old Vince experienced hydraulic overload does not mean that spills of hazardous waste ever occurred at the Old Vince. Because there were no hazardous substances contained in the wastewater at the Old Vince, there was never any spill of hazardous substances at the plant. Nothing within the reports cited by Mr. Marrou supports a conclusion that a spill of wastewater containing hazardous substances occurred at the Old Vince.

C. Attachment 5 To Marrou Declaration – “Examples Of Progress Report Required By Agreed Order.”

Mr. Marrou includes an example of progress reports submitted by the City to the Texas Commission on Environmental Quality (TCEQ). These progress reports provided updates on the City’s sanitary sewer system rehabilitation efforts to reduce collection system overflows. There is no evidence in these documents of any hazardous waste treated by the City at the Old Vince.

D. Attachment 6 To Marrou Declaration - “Examples of spills.”

Included with Mr. Marrou’s declaration are several reports, most of which were submitted by the City to TCEQ. These reports note sewer stoppages, line breaks, power outages and five spills of insignificant volumes at the Old Vince site from various basins during mechanical malfunctions. While the City reported raw sewage spills or the release of sewer water, nothing in any of these reports document that hazardous waste was ever spilled or treated at the Old Vince.

E. Attachment 7 To Marrou Declaration - “Inspection Report.”

Just as with the reports provided in Attachment 6, the TCEQ inspection report for the Old Vince dated September 5, 2001, provides no evidence that hazardous waste was treated at the Old Vince. Item H of the TCEQ inspection report notes that grit and sewage debris was found on the ground “adjacent to the grit removal system.” The TCEQ’s report documents that the grit and sewage debris was removed from the ground and placed in containers. There is no evidence within the TCEQ inspection report that hazardous waste was present in the grit or sewage debris.

F. Attachment 8 To Marrou Declaration - "Drying Bed Locations."

A map of the drying beds utilized at the Old Vince is included with Mr. Marrou's declaration. The map appears to be included only for reference purposes. The map does not demonstrate that hazardous waste was treated at Old Vince.

G. Attachment 9 To Marrou Declaration - "EPA Targeted National Sewage Survey."

Mr. Marrou includes with his declaration an excerpt - just two pages - from EPA's January 2009 Targeted National Sewage Survey. Mr. Marrou relies on EPA's Survey to conclude that "municipal wastewater is documented by EPA to contain Hazardous Substances, i.e. materials designated by EPA in the [CERCLA] ...," therefore inferring that the Old Vince must have accepted and treated hazardous substances since it was a publicly owned treatment works (POTW). Nothing within EPA's Survey indicates that the Old Vince ever accepted or treated hazardous substances.

In the Study, EPA analyzed sewage sludge in 74 cities for 145 pollutants to assess what pollutants may be present. The testing was done between August 2006 and March 2007, more than two years **after** the City's operations at the Old Vince ceased in April 2004. As such, EPA could not have sampled any wastewater from the Old Vince. The excerpt of EPA's Study provided by Mr. Marrou does not indicate whether EPA delineated between POTWs with residential flow, commercial flow or industrial flow, which is material. For Mr. Marrou to assert use of the Study to draw the conclusion that the Old Vince accepted and treated hazardous substances, it is necessary to know how many of the POTWs sampled accepted wastewater streams other than normal municipal discharge like the Old Vince.

While the EPA Study did find 27 metals along with other pollutants present at the POTWs it tested, EPA was clear to state that "it is not appropriate to speculate on the significance of the results until a proper evaluation has been completed and reviewed." It appears that the intent of EPA's Study was to determine what pollutants were present in samples of sewage sludge and whether additional wastewater standards may be necessary as a result of EPA's findings. The Study does not conclude - as Mr. Marrou infers - that all sewage sludge contains hazardous substances, only that samples obtained from certain POTWs show the presence of some pollutants. There is no evidence contained within the EPA Study that demonstrates the Old Vince received or treated hazardous waste.

H. Attachment 10 To Marrou Declaration - "Commercial/Industrial Discharges Pre-Treatment."

Mr. Marrou includes with his declaration various documents and correspondence between EPA, the TCEQ and the City regarding the development of a pretreatment program in the City. Contained within Attachment 10, is an October 3, 2000 letter from the City to EPA that provides the initial results of a survey conducted by the City of industrial users that discharged to

the Old Vince. Minh Foods (now Schwann Foods) was identified as a SIU not because they discharged hazardous chemicals, but because of its BOD and TSS load. Minh/Schwann Foods was and is not a categorical user, but instead is a non categorical significant user.

As the City detailed in its June 2013 response to EPA, the City was not required to operate a pre-treatment plan (PTP) when it owned and operated the Old Vince as the City had not identified at the time any significant industrial users (SIU) that discharged to the Old Vince. Accordingly, the TCEQ was at all times the control authority and not the City during the time that USOR operated at 400 N. Richey and 200 N. Richey. As the regulatory control authority, the TCEQ was the authority responsible for enforcement of State and federal environmental laws concerning USOR. It was not until May 22, 2013, when the City's PTP was approved, that the City became vested with enforcement authority of State and federal environmental laws for industrial dischargers to POTWs subject to EPA's pretreatment regulations that operate within the boundaries of the City. Further, in support of its PTP application, the City engaged Atkins Global to prepare the industrial user survey, which was completed under TCEQ guidance. That survey found no categorical industrial users and only two SIUs were identified by Atkins - Schwann Foods and USOR.

Additional documents supplied by Mr. Marrou are of requests from the TCEQ that the City investigate several industries identified in the RCRA data base as metal finishers that operated in the City. The businesses identified were mostly machine shops and fabrication shops not metal finishers. None of these businesses were ever identified by the City or Atkins as SIUs.

The documents set forth in Attachment 10 do not demonstrate that Minh Foods, Schwann Foods or any other industrial user discharged hazardous substances that were ever received or treated at the Old Vince.

I. Attachment 11 To Marrou Declaration – “Pre-Treatment Upset Investigations.”

Mr. Marrou includes several letters from the City and Severn Trent³ reporting to the Texas Natural Resource Conservation Commission (TNRCC) grease level excursions at the Old Vince. The documents included in this attachment only list grease related stoppages. These documents do not demonstrate that any hazardous waste was ever received or treated by the City at the Old Vince.

J. Attachment 12 To Marrou Declaration – “Effluent Data Reports.”

Attachment 12 contains various reports of lab analyses on effluent for a permit renewal application to the TCEQ for the Old Vince. The reports show that the pollutants detected in the wastewater at the Old Vince are typical of municipal domestic/commercial sewage plants. In issuing the Old Vince discharge permit, (TNRCC # 10495-005/NPDES permit #TX0063410),

³ Beginning March 1, 1994, the City contracted with Severn Trent Services to operate Old Vince on behalf of the City. Under the City's agreement, Severn Trent was responsible for all operations at Old Vince.

the TCEQ determined that there were no pollutants of concern other than typical domestic/commercial sewage parameters (BOD, TSS, NH₃-N) detected in the effluent or TCEQ would have inserted pollutant parameter limits in the Old Vince and/or New Vince Bayou permits to control those pollutants if they were of concern. Merely because a pollutant is detected in wastewater does not make it a pollutant of concern unless it exceeds an applicable State or federal regulatory threshold level. None of the documents set forth in Attachment 12 support Mr. Marrou's erroneous conclusion that hazardous waste was received or treated at the Old Vince.

K. Attachment 13 To Marrou Declaration – "Sludge Data Reports."

Attachment 13 contains numerous reports of lab analyses of wastewater sludge from the Old Vince to the TCEQ. The pollutants detected in the Old Vince sludge are typical of municipal domestic/commercial sewage plant sludge. TCEQ determined that there were no pollutants of concern other than typical domestic/commercial sewage sludge parameters. *See* TNRCC # 10495-005/NPDES permit #TX0063410. Had the TCEQ found there to be pollutant concentrations of concern, it would have inserted pollutant parameter limits in the Old Vince and/or New Vince Bayou permits to control those pollutants in the sludge. Just because a pollutant is detected in wastewater does not make it a pollutant of concern unless it exceeds a State or federal regulatory threshold level. The documents set forth in Attachment 13 do not support Mr. Marrou's erroneous conclusion that hazardous waste was received or treated at the Old Vince.

L. Attachment 14 To Marrou Declaration – "HCPC Investigation."

Mr. Marrou provides a copy of a May 22, 2009 Harris County Pollution Control report that lists the findings of their investigation of the Old Vince at the time that USOR was operating the site. The City did not own the Old Vince at this time, USOR did. The City had not conducted any wastewater treatment activities at the Old Vince since April 2004. The Harris County report notes the poor condition of the plant in 2009. This document does not demonstrate that hazardous waste was ever received or treated at the Old Vince when the City owned and operated the plant.

M. Attachment 15 To Marrou Declaration – "TCEQ Inspection Report."

Attachment 15 is of a TCEQ investigation report dated May 18, 2009 to June 3, 2009 at the Old Vince. The investigation was conducted **after** the City sold the Old Vince to USOR in December 2008. The report details spills that occurred at the USOR site, **not from operations at the Old Vince when the City owned it**. This document does not demonstrate that hazardous waste was ever received or treated at the Old Vince when the City owned and operated the plant.

N. Attachment 16 To Marrou Declaration – "Selected Aerial Photos."

Attachment 16 sets forth various color aerial photos taken between January 2003 and June 2009. Mr. Marrou relies on these aerial photos to speculate which basins at the Old Vince

contained water and whether there was organic material present in the basins that would feed algae growth. Attachment 16 does not demonstrate that hazardous waste was ever received or treated at the Old Vince when the City owned and operated the plant.

O. Agreed Order

Finally, the PRP Group letter includes a copy of the Agreed Order entered into between the City and the TNRCC dated March 19, 2003. In the Order the City agreed to pay a \$5,000 administrative penalty for the alleged violation of spills that exceeded the City's permitted total suspended solids (TSS) limit at the Old Vince, which occurred in February 2001 and June 2001. There was never any finding in the Agreed Order that the TSS effluent spills contained hazardous substances. The Agreed Order specifically states that the Order "shall not constitute an admission by the City of any violation alleged ...nor of any statute or rule." Agreed Order at ¶ 5. The Agreed Order does not contain or support a conclusion that hazardous waste was ever received or treated at the Old Vince when the City owned and operated the plant.

Finally, the City did not have a copy of the March 2003 Agreed Order in its records, which is why the Agreed Order was not noted in the City's June 2013 response to EPA. As the City explained in its June 2013 response, almost all of the City's records related to the Old Vince have been destroyed since the plant was decommissioned in April 2004. Further, records that existed at the time that Old Vince was decommissioned were transferred to the City's offices; however, those offices were destroyed in 2008 as a result of massive flooding and water damage caused by Hurricane Ike. As such, the City did not have a copy of the March 2003 Agreed Order.

Thank you for the opportunity to provide you with a response to the PRP Group's December 26, 2013 letter. The City looks forward to discussing this matter with EPA.



Robin Green, P.E.
Public Works Director
City of Pasadena

Cc: Seby Larsen LLP